ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 21 and 74 of the Commission's Rule With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service	)	MM Docket No. 94-131
	)	
and	)	
	)	
Implementation of Section 309(j) of the Communications Act - Competitive Bidding	)	PP Docket No. 93-253

To: The Commission

COMMENTS

CAI Wireless Systems, Inc., by its attorneys, hereby submits its initial comments in response to the above-captioned Notice of Proposed Rulemaking ("NPRM").[1]

I. Statement of Interest

CAI is a publicly-traded company whose primary business consists of owning and operating wireless cable systems. CAI currently operates wireless cable systems in New York City, Albany and Rochester, New York, and Norfolk/Virginia Beach, Virginia. CAI also has aggregated a portfolio of wireless channel rights, through ownership and channel capacity lease agreements, in Long Island, Buffalo and Syracuse, New York, Hartford, Connecticut and Boston, Massachusetts. CAI also is participating in a video dialtone trial

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[1] Amendment of Parts of 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, FCC 94-293, MM Docket No. 94-131 and PP Docket No. 93-253 (released December 1, 1994) (the "NPRM").

with the Southern New England Telephone Company in West Hartford, Connecticut, and is actively pursuing strategic relationships with other regional telephone companies to develop low cost video distribution systems.

CAI endorses the Commission's ambitious goal of fundamentally restructuring the MDS licensing process. CAI encourages the Commission to implement promptly the changes proposed herein in order to accelerate the ability of wireless cable companies to compete effectively in the multi-channel video programming marketplace.

II. The First Window

The Commission's avowed goal in initiating this rulemaking is to facilitate the development of the wireless cable industry and to enhance coordination in the processing of MDS and ITFS applications. NPRM at para 2. The most significant step which the FCC can take toward this goal is to limit a first window to those parties that can demonstrate they have or control sufficient channel capacity to launch a competitive video programming service. This constraint on first window participation would concentrate Commission resources on the processing and grant of those applications which offer the best short-term prospects for providing consumers with new and/or enhanced video programming alternatives to traditional wired cable systems.

The Commission should open the first window to any entity that can establish that it has or is near to having sufficient channel aggregation to operate a wireless cable system in a particular market. For the reasons set forth in Section III, below, CAI believes that the Commission should auction spectrum on an MSA-wide

and RSA-wide basis. Accordingly, the Commission should include all channels either held or sought in the designated geographic area. Obviously, any entity with an operational system, i.e., a system with at least one hundred paying subscribers, satisfies this test. Such an entity should be eligible regardless of the number of licensed channels available to the operator.

Furthermore, the Commission should adopt separate channel aggregation eligibility standards for small and large markets where systems are not yet operational. A large market would include any location from which at least 140,000 households could receive line-of-sight service. Specifically, CAI recommends 12- and 20- channel thresholds for small and large markets, respectively. Channels applied for in a window would count toward satisfying the small and large market channel thresholds.

Applicants should be required to meet two separate tests in order to establish their eligibility under the channel aggregation standard. As an initial matter, the licensing status of the channels on which the licensee or system operator intends to rely is critical. Only the following channels should be included:

- licensed MDS and ITFS channels;
- channels proposed in pending applications, but only if such applications are unopposed and cut-off from competing applications; and
- channels applied for in the first window.

Secondly, the applicant must be a licensee, an applicant or hold contractual rights, e.g., excess capacity channel leases, either directly or through an affiliate or other entity which it

controls, to the MDS channels and/or to the ITFS channels the applicant seeks to apply toward the channel aggregation standard.

III. Subsequent Windows

Establishing prompt, efficient and predictable processing rules for MDS applications is critical to the wireless cable industry. Accordingly, CAI supports the adoption of a two-step application filing process based on specifically determined geographic areas, as tentatively endorsed by the FCC in the NPRM. CAI also recommends that the Commission adopt a two-step auction process to resolve in an expeditious manner potential inter-area technical conflicts.

As currently licensed and operated, wireless cable systems serve markets and not geographical areas. In particular, analog transmission technologies as well as cumbersome and time-consuming licensing processes effectively preclude aggressive efforts to "fill in" service throughout entire geographic areas.

Nevertheless, the Commission should move without hesitation to an MDS licensing policy based on geographic areas. The Commission has used successfully a geographic area approach with a number of new communication services.[2] This approach will maximize the utility (and value) of the spectrum which the Commission proposes to auction. In addition, it would permit the adoption of streamlined processing rules for specific technical proposals that

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[2] Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules to Provide Interactive Video and Data Services, 7 FCC Rcd 1630, recon., 7 FCC Rcd 4923 (1992) (MSA and RSA geographic areas); Rules and Policies for the Local Multipoint Distribution Service, 8 FCC Rcd 557 (1993) (Rand McNally Basic Trading Areas); Implementation of Sections 3(n) and 332 of the Communications Act, 8 FCC Rcd ____ (1994) (Specialized Mobil Radio adopts MTA areas).

would be authorized under the new "area licenses." Finally, as explained more fully below, a designated area license approach would be most responsive to the enhanced technical flexibility that will be available to wireless operators when they transition to digital transmission systems.

CAI recommends that the Commission adopt Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs") as the licensed areas for MDS. These designations best conform to industry practices. Traditionally, wireless cable operators have developed markets and not geographical areas. While some operators have achieved significant management and operational economies through the clustering of systems, many systems are free-standing enterprises serving subscribers within a 30-35 mile radius of the transmission facilities. The smaller MSA and RSA area designations better match historic operating patterns and are preferable to the larger ADI and trading area definitions.

The Commission should adopt procedures under which potential bidders submit short-form applications for MSA/RSA "area licenses." A competitive bidding process should then be used to select the prevailing applicant. To discourage speculators, the FCC should impose a front-end non-refundable fee on all bidders, restrict pre-bidding communications among competitors and require winning bidders to build and operate facilities in the area. Prevailing bidders would obtain the right to operate facilities on the E, F and H channels anywhere throughout the service area, subject to previously authorized or proposed ITFS and MDS facilities and conflicting technical proposals submitted by other prevailing

applicants of neighboring designated areas at the long-form application phase of processing.

At the first round auction, bidders will be able to take into account the fact that significant population centers may be located close to MSA and RSA borders, that a prevailing applicant in a neighboring MSA or RSA may apply for mutually exclusive wireless cable channels in such MSA or RSA, and that such filings may limit the availability of channels within the bidder's area. Where mutually exclusive applications are identified at the long-form application stage, those parties should be given 30 days from the release of a public notice to negotiate interference rights, channel splitting, the dismissal of one of the applications, etc. If no compromise is reached, the parties should be required to participate in a competitive auction for channels in the border area.

The auction procedures used to award channel rights to a designated geographic area provide a ready and efficient mechanism to resolve conflicting channel proposals between contiguous designated areas. A two-stage auction process will expedite the grant of conditional licenses. Consideration of petitions to deny should be delayed until the two-stage auction process is completed.

IV. Interference and PSA Issues

One of the more difficult aspects of this rulemaking is that it seeks to prescribe a set of application and processing rules for an industry on the edge of a technological transformation. Digitization will provide enormous competitive and technical opportunities. Digital architecture will provide the first opportunity to deliver area-wide MDS service, provided that the

Commission gives operators sufficient flexibility to develop and modify such systems. Accordingly, protected service areas should be made coextensive with area licenses to encourage maximum possible interference-free service.

In a digital environment, licensees could be restricted to a certain signal strength at MSA/RSA borders. However, the Commission must develop a transmission policy to permit the efficient licensing of analog systems which could or would interfere with stations operating in neighboring MSAs and RSAs.

CAI recommends that as an interim measure, PSAs for "area licenses" should be based on specific long-form application filings. That is, the FCC should not use MSA and RSA boundaries for PSA calculations. Such a protection standard could prevent the construction of a new system while protecting areas where no system is contemplated. CAI does not favor -- until the introduction of digital transmission technologies -- MSA-based PSA protection standards.

CAI supports sequential filing windows for short and long-form applications based on MSA and RSA populations. Auctioning spectrum in descending order of designated area population levels holds the greatest promise for rapidly increasing competition in the multichannel video programming market. This Commission-tested approach will produce an open and vigorous competitive auction process. The auctions should take place on a level and crowded playing field.

Similarly, the Commission should not restrict bidding to predetermined sites. The location of wireless cable transmission facilities is plainly best left to operators. This proposal

appears to be based on the flawed premise that licenses are optimally located. In fact, co-location plans may not make sense until substantially all the channels in a market are acquired. Moreover, limiting consideration of potential sites to previously authorized E, F and H channels repeats the Commission's grave decade-plus error of focusing on channels rather than markets. The NPRM's failure to include sites at which A, B, C, D and G channel group stations are authorized is plainly inconsistent with the Commission's avowed goal of permitting operators to aggregate a significant number of channels to meet subscriber demand and compete with wired cable television systems. The Commission should reject this approach.

The Commission should afford substantial discretion to prevailing bidders to develop "area licenses." Following the grant of the initial long-form application, an area licensee should be allowed to undertake modifications without the Commission's prior approval. Under this so-called notice filing system, licensees would provide complete technical details and a certification that the modification complies with the FCC's interference rules.

It is time for the Commission to end its regulation of beam benders, multiple transmitter systems and other engineering solutions which can expand service quickly to underserved areas. Area licensees would be in the best position to use cross polarization, directional antennas, natural terrain shielding and electrical and mechanical beam tilts to avoid self-interference. The Commission's low power signal booster rules provide a proven post-construction mechanism for protecting incumbent MDS and ITFS licensees. See 47 C.F.R. §21.93(g). So long as basic interference protection requirements are satisfied, MDS area licensees should be

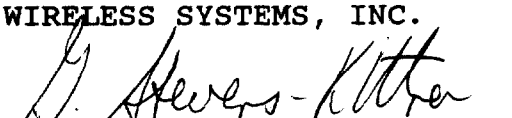
given the flexibility to maximize coverage within their service areas.

V. Competitive Bidding Procedures

CAI supports the use of sequential oral auctions to award channel rights in MSAs and RSAs. Each auction should be for all remaining channels in the designated area. That is, the Commission should not auction the E, F, H channel groups and MDS channels 1 and 2 separately. Auctions for each channel group and/or channel would encourage speculators and create wholly avoidable adjacent channel interference issues that could consume substantial Commission resources and slow the licensing process. Sequential oral auctions appear to be the simplest and most direct way to conduct competitive bidding. Availability of MDS and ITFS channel rights, population distribution within designated areas and in neighboring designated areas, and company business strategies will substantially impact the valuation of "area licenses." Technical and market interdependence between geographical areas also will vary widely. In these circumstances, a simple, economic bidding procedure is the best alternative. Sequential oral auctions appear best suited for this purpose.

Respectfully submitted,

CAI WIRELESS SYSTEMS, INC.

By: 

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